IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11467 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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R.D.PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR IS SUPEHIA for the Petitioner

MS REETA CHANDARANA, ASSISTANT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/02/2006

ORAL JUDGMENT

1. Rule. Ms. Reeta Chandarana, learned Assistant Government Pleader waives service of Rule on behalf of the respondents. At the joint request of the learned

advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner initially challenged the action of respondents in not releasing the entire amount of gratuity upon his retirement. He prayed for releasing of gratuity with interest. The petitioner retired on superannuation with effect from 01.04.2001.

2.1 At the time of retirement, the petitioner was facing departmental inquiry. This inquiry continued after his retirement. Eventually, the disciplinary authority passed an order dated 02.09.2003 by which the disciplinary authority was pleased to impose cut-of Rs. 100/- per month for a period of three years to the pension payable to the petitioner. It was further provided that an amount of Rs. 25,712 (Rupees Twenty five Thousand Seven Hundred and Twelve only) be recovered from the petitioner. This was on the basis of conclusion made by the disciplinary authority that the petitioner along with other government officials was responsible for causing loss to the government to the tune of Rs. 3,21,400/- (Rupees Three Lakhs Twenty One Thousand and Four Hundred only). The disciplinary authority passed

another order dated 06.09.2005 by which the period during which the petitioner was placed under suspension was treated to be period as not spent on duty. The petitioner has amended the petition and challenged these orders.

3. It is the common ground that similarly situated employees who are also visited with various penalties on account of said incident whereby loss was caused to the government to the tune of Rs. 3,21,400/- had approached Civil Services Tribunal by filing appeals. By judgment dated 26.08.2003, the Services Tribunal allowed one such appeal partly. The Tribunal was pleased to set aside the order of penalty and remand the proceeding for fresh consideration on the basis of observations made by the Tribunal. The Tribunal was of the opinion that delinquent was not given reasonable opportunity to defend himself, since his representation to the notice issued by the disciplinary authority along with the inquiry officer's report was not considered and the final order of penalty was passed without assigning any reasons.

4. Learned Advocates appearing for the parties submitted that the case of the petitioner is similar to

one decided by the Services Tribunal. Ms. Chandarana, learned Assistant Government Pleader under the instructions of Mr.F.B.Barat, Office Superintendent under the Commissioner of Fisheries stated that the department would give the same treatment to the petitioner for rehearing of the case as was done in the case of other similarly situated employees.

5. In view of the above background, the order dated 02.09.2003 passed by respondent No.2 against the petitioner imposing penalty as mentioned above is quashed. Proceedings are remanded to the disciplinary authority for fresh consideration as per the observations made by the Gujarat Services Tribunal by order dated 26.08.2003. Consequently, the order dated 06.09.2005 is also set aside.

6. The disciplinary authority shall pass fresh order in accordance with law expeditiously and preferably within a period of two months from the date of receipt of copy of this order. The question of reimbursement of amount already recovered from the petitioner will be governed by the ultimate outcome of the remand proceedings. Since the entitlement of the petitioner to receive full gratuity

and pay and allowances during the period of suspension can be ascertained only after the disciplinary authority passes fresh order, the question of payment of interest on delayed payment of gratuity has not been considered in this petition. It will be open for the authorities to take into account all aspects of the matters. Once the order is passed by the disciplinary authority, if any grievance still survives, it will be open for the petitioner to take recourse in accordance with law.

7. The petition is disposed of. Rule is made absolute to the aforesaid limited extent, with no order as to costs.

[Akil Kureshi, J.]

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